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OCT 29 2004

**OFFICE OF PETITIONS**

In re Application of	:
Baughn, Baughn, and Oakey	:
Application No. 10/796,969	:
Filed: 11 March, 2004	:
Atty Dkt No. 021200.0101PTUS	:
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	:
	:

This is in response to the petition filed under 37 CFR 1.47(a)<sup>1</sup> on 1 October, 2004.

The petition is **DISMISSED**.

Rule 47 applicant is given TWO MONTHS from the mailing date of this decision to reply, correcting the below-noted deficiencies. Any reply should be entitled "Request for Reconsideration of Petition Under 37 CFR 1.47(a)," and should only address the deficiencies noted below, except that the reply may include an oath or declaration executed by the non-signing inventor.

**FAILURE TO RESPOND WILL RESULT IN ABANDONMENT OF THE APPLICATION.**  
Extensions of time may be obtained in accordance with 37 CFR 1.136(a).

The above-identified application was filed on 11 March, 2004, without an executed oath or declaration.

Accordingly, on 1 June, 2004, Initial Patent Examination Division mailed a Notice to File Missing Parts of Nonprovisional Application, requiring an executed oath or declaration and a surcharge for its late filing. A two (2) month period for reply was set.

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<sup>1</sup>A petition under 37 CFR 1.47(b) is inappropriate in this instance since one of the inventors has signed the declaration. A petition under 37 CFR 1.47(b) is only appropriate where none of the inventors will sign. Accordingly, the petition will be treated as a petition under 37 CFR 1.47(a).

In response, on 1 October, 2004, petitioners filed the present petition, accompanied by a two (2) month extension of time and fee, the surcharge, and a declaration naming Antony L. Baughn, Timothy S. Baughn, and Douglas Oakey as joint inventors and signed by all inventors except Oakey on behalf of themselves and joint inventor Oakey.

Petitioners assert that a letter was mailed to the non-signing inventor, but was returned as undeliverable. A copy of the letter and the envelope showing it was returned as undeliverable have been included with the present petition.

A grantable petition under 37 CFR 1.47(a) requires:

- (1) proof that the non-signing inventor cannot be reached or located, notwithstanding diligent effort, or refuses to sign the oath or declaration after having been presented with the application papers (specification, claims and drawings);
- (2) an acceptable oath or declaration in compliance with 35 U.S.C. §§ 115 and 116;
- (3) the petition fee;
- (4) a surcharge of \$130 or \$65 (small entity) if the petition and/or declaration is not filed at the time of filing the application, and
- (5) a statement of the last known address of the non-signing inventor.

The petition lacks item (2).

With regard to item (2), the declaration present with the present petition is defective in that it lacks the residence, mailing address, and citizenship of non-signing inventor Oakey. The oath or declaration must identify the mailing address, and the residence if an inventor lives at a location which is different from where the inventor customarily receives mail, of each inventor.<sup>2</sup> Further, a statement of the inventor's citizenship is a statutory requirement and cannot be waived.<sup>3</sup> Petitioners must submit a new oath or declaration in compliance with 37 CFR 1.63 and 1.67, signed by all of the signing inventors on behalf of themselves and the non-signing inventor.

Further correspondence with respect to this matter should be addressed as follows:

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<sup>2</sup>37 CFR 1.63(c).

<sup>3</sup>35 U.S.C. § 115, MPEP 605.01.

By mail: Mail Stop Petition  
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By FAX: (703) 872-9306  
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By hand: U.S. Patent and Trademark Office  
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Telephone inquiries related to this decision should be directed  
to the undersigned at 571-272-3231.



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Office of Petitions